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96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 96-
1382, Part I

NUCLEAR WASTE POLICY ACT

SEPTEMBER 24, 1980.—Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

SUPPLEMENTAL

and

SEPARATE VIEWS

COMPLETED

ORIGINAL

[To accompany H.R. 6390 which on January 31, 1980, was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce to whom was referred the bill (H.R. 6390) to amend the Atomic Energy Act of 1954, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act".

DEFINITIONS

SEC. 2. As used in this Act—

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(1) The term "Commission" means the Nuclear Regulatory Commission.

(2) The term "Secretary" means the Secretary of Energy.

(3) The term "disposal" means the long-term isolation of radioactive waste.

(4) The term "high-level radioactive waste" means spent nuclear fuel and the highly radioactive wastes resulting from the reprocessing of spent nuclear fuel. Such term includes both liquid waste which is produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high-level radioactive waste for purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, which have a half life greater than 5 years, and which are in concentrations greater than 10 nanocuries per gram or in such other concentrations as the Commission may prescribe to protect the public health and safety.

(6) The term "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(7) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constitutent elements of which have not been separated by reprocessing.

(8) The term "site characterization" means activities undertaken to determine the geologic characteristics of a site and to otherwise determine if a site meets the requirements applicable to sites for repositories. Such term includes borings, surface excavations, excavations of exploratory shafts, and in situ testing needed to determine the suitability of a site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

(9) The term "repository" means any facility for the permanent disposal of transuranic waste, high-level radioactive waste, or both such wastes, whether or not such facility is designed to permit the subsequent recovery of the waste placed in the repository;

(10) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

TITLE I—DISPOSAL OF TRANSURANIC AND HIGH-LEVEL RADIOACTIVE WASTE

FINDINGS AND PURPOSE

SEC. 101. (a) FINDINGS.—The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) the accumulation of spent fuel from nuclear power reactors, radioactive waste from commercial nuclear reprocessing, activities related to medical research, diagnosis, and treatment, and nuclear research and development activities, and radioactive waste from other sources, has created a national problem;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of radioactive waste disposal have not been adequate;

(4) the Federal Government has the responsibility to provide for the permanent disposal of transuranic waste and high-level radioactive waste in order to protect the public health and safety and the common defense and security;

(5) the primary objective of repositories for such waste is to isolate them from the biosphere;

(6) State and public participation in the planning and development of permanent repositories for the disposal of radioactive waste is essential in order to promote confidence among the public with regard to the safety of disposal of radioactive waste;

(7) the implementation of a radioactive waste repository program in accordance with this title would provide reasonable assurance that methods of safe disposal of transuranic waste and high-level radioactive waste can be available when such methods are needed; and

(8) radioactive waste has become a major issue of public concern, and stringent precautions must be taken to ensure that radioactive waste does not adversely affect the public health and safety of this or future generations.

(b) PURPOSE.—It is the purpose of this title to—

(1) establish a schedule for the siting, construction, and operation of licensed permanent repositories for transuranic waste and high-level radioactive waste which will provide the Congress with a reasonable assurance that the public will be adequately protected from the hazards posed by such wastes;

(2) establish the Federal responsibility for the disposal of such wastes from nuclear activities; and

(3) establish a definite Federal policy for the disposal of such wastes.

IDENTIFICATION OF SITES FOR REPOSITORIES

SEC. 102. (a) IN GENERAL.—Not later than January 1, 1982, the Secretary shall identify and recommend to the President at least four sites which the Secretary determines are suitable for development as repositories. A recommendation of a site shall include a detailed statement of the basis for the recommendation of the site. If the Secretary recommends a site to the President, the Secretary shall notify the State Review Board of the State in which the site is located of the Secretary's recommendation and the basis for such recommendation.

(b) GUIDELINES.—Not later than June 30, 1981, the Secretary shall, in consultation with the Council on Environmental Quality, the Environmental Protection Agency, the Nuclear Regulatory

Commission, and the United States Geological Survey, issue guidelines for the recommendation of sites for repositories. Such guidelines shall include criteria for the elimination from consideration of sites which because of valuable natural resources, proximity to populations, hydrogeophysics, seismic activity, nuclear defense activities, or such other factors as the Secretary considers appropriate would be unsatisfactory as sites for repositories. The guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering sites to be recommended under subsection (a). The development of guidelines under this subsection shall be considered a preliminary decisionmaking activity and shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(c) HEARINGS.—Before recommending any site for a repository to the President the Secretary shall hold public hearings in the vicinity of the site to inform the residents of the area in which the site is located of the proposed recommendation and to receive their comments.

(d) PRESIDENTIAL REVIEW OF RECOMMENDED SITES.—(1) The President shall review each site recommended by the Secretary under subsection (a). Within 60 days after the submission of a recommendation for a site, the President shall either approve or disapprove the site and transmit his decision to the Secretary and the State Review Board of the State in which the site is located.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a site upon determining that the information provided with the recommendation is not sufficient to permit a decision within the 60 days referred to in paragraph (1).

(e) CONTINUATION OF SITE SCREENING.—After the identification of sites under subsection (a), the Secretary shall continue to screen other sites to determine their suitability for repositories.

SITE CHARACTERIZATION

SEC. 103. (a) IN GENERAL.—The Secretary shall carry out in accordance with this section appropriate site characterization activities at each site approved under section 102.

(b) NUCLEAR REGULATORY COMMISSION AND STATE REVIEW BOARDS.—(1) Before proceeding to sink shafts at any site, the Secretary shall submit for such site to the Commission and to the State Review Board of the State in which the site is located for their review and comment—

(A) an environmental assessment of the nonradiological impacts of the site characterization activities planned for such site and a discussion of alternative activities which may be undertaken to avoid such impacts; and

(B) a plan for site characterization activities to be conducted at such site which plan shall include—

(i) a description of the site;

(ii) a description of the site characterization activities, including the extent of planned excavations, plans for any

on-site testing of radioactive or nonradioactive material, investigation activities which may affect the ability of the site to isolate radioactive wastes, and provisions to control any adverse, safety-related impacts from site characterization activities;

(iii) plans for decommissioning of the site if it is determined unsuitable for application for licensing as a repository;

(iv) criteria to be used to determine if the site is acceptable as a site for a repository; and

(v) any other information required by the Commission.

(2) During the conduct of site characterization activities at a site the Secretary shall report to the Commission and to the State Review Board of the State in which the site is located on the nature and extent of such activities and the information developed from such activities.

(c) TESTS.—The Secretary shall conduct at sites at which site characterization activities are being conducted such tests as may be necessary to provide the necessary data for an application for a construction authorization for a repository at the site and for compliance with the National Environmental Policy Act of 1969. The Secretary shall report to the Commission on the tests conducted at a site pursuant to this subsection and on the information developed from such tests.

(d) RESTRICTIONS.—In conducting site characterization activities or tests pursuant to subsection (c)—

(1) the Secretary may not use radioactive materials at a site unless the Commission and the Secretary concur that such use is necessary to provide data for the submission of an application for a construction authorization for a repository at the site;

(2) if radioactive materials are placed in a site, the Secretary shall place the smallest quantity necessary to determine the suitability of the site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent fuel; and

(3) any radioactive material used or placed on a site shall be fully retrievable.

CONSTRUCTION AUTHORIZATIONS

SEC. 104. (a) IN GENERAL.—If after completion of site characterization activities at a site—

(1) the Secretary determines that the site meets the requirements applicable to repositories, the Secretary shall proceed in accordance with this section to secure approval of the site and a construction authorization for construction of a repository at the site, or

(2) the Secretary determines that the site does not meet such requirements, the Secretary shall notify the State Review Board of the State in which the site is located of such determination.

(b) HEARINGS AND PRESIDENTIAL APPROVAL.—(1) If after completion of site characterization activities at a site the Secretary determines that the site meets the requirements applicable to repositories, the Secretary shall hold public hearings in the vicinity of the

site to inform the residents of the area in which the site is located of the determination of the Secretary and to receive their comments. If upon completion of the hearings the Secretary affirms the determination, the Secretary shall submit to the President a recommendation that the President approve the site for the development of a repository.

(2)(A) The President shall review each site recommended by the Secretary under paragraph (1)(B), and, within 60 days after the submission of a recommendation for a site, the President shall either approve or disapprove the site and transmit his decision to the Secretary and the State Review Board of the State in which the site is located.

(B) The President may delay for not more than 6 months his decision to approve or disapprove a site upon determining that the information provided with the recommendation is not sufficient to permit a decision within the 60 days referred to in subparagraph (A).

(c) SUBMISSION OF APPLICATION.—(1) If the President approves a site for a repository under subsection (b), the Secretary shall apply to the Commission for a construction authorization for construction of a repository at the site and shall provide the State Review Board of the State in which the site is located a copy of the application.

(2) Not later than January 1, 1986, the Secretary shall submit to the Commission an application for a construction authorization for the construction of a repository.

(d) COMMISSION ACTION.—(1) The Commission shall consider an application for a construction authorization for the construction of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the first such application not later than—

(A) January 1, 1990, or

(B) the expiration of four years after the date of the submission of the application,

whichever occurs later.

(2) If the Commission approves an application for a construction authorization for the construction of a repository, it shall—

(A) notify the Congress of the approval of such application and include in the notice a detailed statement of the reasons for approval of the application, and

(B) notify the State Review Board of the State in which the repository would be located of the approval and include in the notice a detailed statement of the reasons for approval of the application.

(3) If a State Review Board of a State petitions the Congress for the disapproval of the construction of a repository for which a construction authorization has been granted by the Commission, the Commission shall provide the Congress with such information respecting the construction and proposed operation of the repository as the Congress may require.

CONGRESSIONAL DISAPPROVAL

SEC. 105. (a) IN GENERAL.—(1) If the Commission grants a construction authorization for the construction of a repository and a State Review Board of a State petitions the Congress, in accordance

with section 106(b), for the disapproval of the construction of the repository at a site within the State, the repository may not be constructed at the site if, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of the petition submitted by the State Review Board, the Congress passes a concurrent resolution stating in substance that the Congress disapproves the construction. A petition shall be considered to have been received by the Congress on the date of its receipt by the Speaker of the House of Representatives and the President pro tempore of the Senate.

(2) For purposes of paragraph (1)—

(A) continuity of session is broken only by an adjournment of the Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-calendar-day period.

(3) For purposes of this section, the term "concurrent resolution" means a concurrent resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress does not approve the construction of the repository for which a construction authorization was granted by the Nuclear Regulatory Commission on , 19 ." with the blank spaces being appropriately filled.

(4) This section is enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such, it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of concurrent resolutions defined in paragraph (3) and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(b) REFERRAL AND DISCHARGE.—(1) A concurrent resolution once introduced with respect to the construction of a repository shall immediately be referred to the appropriate committee or committees of the House of Representatives and Senate (and all resolutions with respect to such construction shall be referred to the same committee or committees).

(2)(A) If a committee to which a concurrent resolution respecting the construction of a repository has been referred has not reported it at the end of 20 calendar days after it was received by the House involved, it shall be in order to move to discharge such committee from further consideration of such concurrent resolution, to discharge such committee from further consideration of any other concurrent resolution with respect to such construction which has been referred to the committee, or to discharge such committee from both.

(B) A motion to discharge a committee from consideration of a concurrent resolution respecting the construction of a repository may be made only by an individual favoring the concurrent resolution, shall be highly privileged (except that it may not be made after the committee has reported a concurrent resolution with re-

spect to such construction), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the concurrent resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same construction.

(c) CONSIDERATION.—(1) When all committees to which the concurrent resolution was referred have reported (or have been discharged from further consideration of) a concurrent resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) Debate on a concurrent resolution shall be limited to not more than 5 hours, which shall be divided equally between those favoring and those opposing the concurrent resolution. A motion to limit debate shall not be debatable. An amendment to, or motion to recommit, the concurrent resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagreed to.

(d) MISCELLANEOUS.—(1) Motions to postpone made with respect to the discharge from committee or the consideration of a concurrent resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(2) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a concurrent resolution shall be decided without debate.

(3) If one House of Congress receives from the other House a concurrent resolution respecting the construction of a repository, then the following procedure applies:

(A) The concurrent resolution of the other House with respect to such construction shall not be referred to a committee.

(B) With respect to the concurrent resolution of the first House with respect to such construction—

(i) the procedure with respect to that or other concurrent resolutions of such House with respect to such application shall be the same as if no concurrent resolution from the other House with respect to such request had been received; but

(ii) on any vote on final passage of a concurrent resolution of the first House with respect to such construction a concurrent resolution from the other House with respect to such construction where the text is identical shall be automatically substituted for the concurrent resolution of the first House.

STATE REVIEW BOARDS

SEC. 106. (a) DEFINITION.—(1) For purposes of this title, a State Review Board of a State is an entity of the State created under State law with the authority described in paragraph (2) and the composition prescribed by paragraph (3).

(2) A State Review Board shall be authorized under State law to—

(A) review activities under this title and activities of the Commission with respect to any site in the State for a repository to determine the potential economic, environmental, social, and public health and safety impacts of the repository on the State and its residents,

(B) be a representative of the State in any proceeding before the Commission respecting a site for a repository in the State, and

(C) submit, in accordance with subsection (b), to the Congress petitions requesting the Congress to disapprove, in accordance with section 105, construction of repositories in the State.

(3) The members of a State Review Board shall represent the general public in the State and, if any action has been taken under this title with respect to a site in the State for a repository, the Indian tribes and local governments which would be affected by the repository.

(b) PETITIONS TO CONGRESS.—If an application for a construction authorization for the construction of a repository in a State is approved by the Commission, the State Review Board of the State may submit to the Congress a petition for disapproval, in accordance with section 105, of construction of a repository under the permit. A petition respecting construction of a repository may be submitted not later than the 30th day after the date the Commission transmits to the Board its decision granting a construction authorization for such construction. The petition shall contain a detailed statement of the reasons of the Board for seeking disapproval of the construction.

(c) FINANCIAL ASSISTANCE.—(1) Subject to paragraph (2), and to the availability of funds to carry out this paragraph, the Secretary shall make grants to the State Review Boards of each State in which a site for a repository has been approved under section 102(d). Grants under this paragraph shall be made under such terms and conditions as the Secretary may prescribe, and the amount of funds provided a Board under this paragraph in any fiscal year may not exceed 75 percent of the costs of the operation of the Board in such year as determined by the Secretary.

(2) A State Review Board may not receive any grant after the expiration of one year after—

(A) the date the Secretary notifies the State Review Board under section 104(a)(1) that a site in the State does not meet the requirements applicable to repositories,

(B) the date the President notifies the State Review Board under section 104(b) that the President does not approve a site in the State for a repository, or

(C) the date on which the Commission disapproves an application for a construction authorization for a repository at a site in the State,

whichever occurs first unless there is another site in the State approved under section 102(d) with respect to which the actions described in subparagraphs (A), (B), and (C) have not been taken.

JUDICIAL REVIEW OF AGENCY ACTIONS

SEC. 107. (a) IN GENERAL.—Notwithstanding any other provision of law, the actions taken by the Secretary to recommend a site for approval by the President and in connection with the site characterization of a site, any actions taken by the Commission in granting or denying any construction authorization application submitted under section 104 or for any operating permit for a repository, and any actions described in section 108 shall not be subject to judicial review except as authorized by subsection (b).

(b) JUDICIAL REVIEW OF ACTIONS.—(1) A civil action for judicial review of an administrative action described in subsection (a) may be brought not later than the 180th day following the date of such action, except that the court referred to in paragraph (2) may extend the time for bringing such a civil action if the court determines that the facts on which the civil action is based were not reasonably available within the applicable 180-day time limit.

(2) A civil action for judicial review of any such administrative action shall be barred unless a complaint is filed before the expiration of the time limit prescribed by paragraph (1) in the United States Court of Appeals for the District of Columbia Circuit, acting as a special court. No other court of the United States, or any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such civil action.

EXPEDITED AUTHORIZATIONS

SEC. 108. (a) ISSUANCE OF AUTHORIZATIONS.—(1) Subject to paragraph (2), to the extent that the taking of any action related to the characterization of a site or the construction or initial operation of a repository under this title requires a certificate, right-of-way, permit, lease, or other authorization from a Federal officer or agency, such officer or agency shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such officer or agency. All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(2) The requirements of paragraph (1) shall not be applicable in the case of any action related to any permit or other authorization issued or granted by, or requested from, the Nuclear Regulatory Commission.

(b) TERMS OF AUTHORIZATIONS.—Except as provided in the second sentence of this subsection, nothing contained in this section shall be construed to impair the authority of any Federal officer or agency to add to, amend, or abrogate any term or condition included in any authorization issued or granted pursuant to subsection (a) if such action is otherwise permitted under applicable laws administered by such officer or agency. In the case of any such action

which is permitted but not required by law, the Federal officer or agency shall have no authority to take such action if the terms and conditions to be so added, or as so amended, would have the effect of terminating the characterization, construction, or initial operation of the potential or permanent repository which the authorization affects.

SCHEDULE FOR CERTAIN STANDARDS AND CRITERIA

SEC. 109. (a) EPA STANDARDS.—Not later than November 1, 1981, the Administrator of the Environmental Protection Agency, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from radioactive material.

(b) CRITERIA.—Not later than November 1, 1981, the Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate criteria which it will apply in reviewing under the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, applications for construction authorizations for the construction of repositories.

AUTHORIZATION OF APPROPRIATIONS; CONTRACT AUTHORITY

SEC. 110. (a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary to carry out this title $5,000,000 for the fiscal year ending September 30, 1981.

(b) CONTRACTS.—The authority of the Secretary to enter into contracts under this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

TERMINATION OF TITLE

SEC. 111. (a) SECTIONS 107 AND 108.—Sections 107 and 108 shall cease to have effect at such time as the Secretary commences licensed commercial operation of at least one repository.

(b) REMAINDER OF TITLE.—The provisions of this title, other than sections 107 and 108, shall cease to have effect after December 31, 1999.

TITLE II—LOW-LEVEL RADIOACTIVE WASTE

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

SEC. 201. (a)(1) It is the policy of the Federal Government that—

(A) each State is responsible for the disposal of non-Federal low-level radioactive waste generated within its borders;

(B) non-Federal low-level radioactive waste can be most safely and efficiently managed on a regional basis.

(2)(A) To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of facilities for the disposal of low-level radioactive waste.

(B) A compact entered into under subparagraph (A) shall not take effect until the Congress has by law consented to the compact. Each such compact shall provide that every 5 years after the com-

pact has taken effect the Congress may by law withdraw its consent. After January 1, 1987, any such compact may restrict the use of the regional disposal facilities under the compact to the disposal of non-Federal low-level radioactive waste generated within the region.

(b)(1) In order to assist the States in carrying out the policy set forth in subsection (a)(1), the Secretary shall prepare and submit to Congress and to each of the States within 120 days after the date of the enactment of this Act a report which—

(A) defines the disposal capacity needed for present and future low-level waste on a regional basis;

(B) defines the status of all commercial low-level nuclear waste disposal sites and includes an evaluation of the license status of each such site, the state of operation of each site, including operating history, an analysis of the adequacy of disposal technology employed at each site to contain low-level wastes for their hazardous lifetimes, and such recommendations as the Secretary considers appropriate to assure protection of the public health and safety from wastes transported to such sites;

(C) evaluates the transportation requirements on a regional basis and in comparison with performance of present transportation practices for the shipment of low-level nuclear wastes, including an inventory of types and quantities of low-level wastes, and evaluation of shipment requirements for each type of waste and an evaluation of the ability of generators, shippers, and carriers to meet such requirements; and

(D) evaluates the capability of the low-level waste disposal facilities owned and operated by the Department of Energy to provide interim storage for commercially generated low level waste and estimates the costs associated with such interim storage.

(2) In carrying out this subsection, the Secretary shall consult with the Governors of the States, the Nuclear Regulatory Commission, the Environmental Protection Agency, the United States Geological Survey, and the Secretary of Transportation, and such other agencies and departments as he finds appropriate.

(3) This subsection does not authorize appropriations for the fiscal year ending September 30, 1980.

URANIUM MILL SITE AT EDGEMONT

SEC. 202. (a) The Secretary shall undertake an investigation to determine whether Federal funding is appropriate for 90 percent of the cost of any stabilization, decommissioning, and decontamination action necessary in connection with the uranium mill tailings site owned by the Tennessee Valley Authority and located at Edgemont, South Dakota. The investigation shall take into consideration whether such tailings resulted all or in part from activities conducted under Federal contract; and shall include an analysis of the total costs which would be required to undertake such actions with respect to such site, including the costs of acquiring and managing any disposal site and facilities which may be necessary for disposal of radioactive materials removed from the site.

(b) Not later than 120 days after the date of the enactment of this section, the Secretary shall complete the investigation prescribed by subsection (a) and shall submit a report to the Congress of the results of the investigation. The report shall include any recommendation for legislation to provide for Federal funding. Any such recommended legislation shall be consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978. The report shall also contain the comments and recommendations of the Tennessee Valley Authority.

(c) This section shall take effect October 1, 1980, or the date of the enactment of this Act, whichever is later.

Amend the title so as to read:

A bill to establish licensed permanent repositories for transuranic waste and high-level radioactive waste, to authorize State compacts for the establishment and operation of regional repositories for low-level radioactive waste, and for other purposes.

PURPOSE OF THE BILL

The purpose of the bill is to establish licensed permanent repositories for transuranic waste and high-level radioactive waste, to authorize State compacts for the establishment and operation of regional repositories for low-level radioactive waste, and for other purposes.

LEGISLATIVE BACKGROUND

On January 31, 1980, the Honorable Morris K. Udall introduced H.R. 6390, which was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce.

COMMITTEE ACTION

On January 31, 1980, the bill, H.R. 6390, was introduced by the Honorable Morris K. Udall, and was referred jointly to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce.

On July 25, 1980, the Subcommittee on Energy and Power conducted a hearing on the bill. On August 19, 1980, the Subcommittee considered the bill and ordered it reported to the Committee, as amended, by voice vote. On August 26, 1980, the Interstate and Foreign Commerce Committee met in open session and considered the bill. Then, a quorum being present, the Committee by voice vote ordered the bill reported with amendments.

The Committee hearings on this legislation are discussed *infra* at the section entitled "Committee hearings".

SUMMARY OF H.R. 6390

H.R. 6390 establishes a program within the Department of Energy relating to the establishment of a full scale licensed repository for the disposal of radioactive waste and creates a program for the disposal of low-level radioactive materials.

The bill directs the Secretary of Energy to recommend to the President, by January 1, 1982, at least four potential repositories sites. The President then has 60 days to consider the recommenda-

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tions and decide if the Secretary should undertake site characterization activities at any or all of the designated sites. Prior to making any recommendation to the President, the Secretary is directed to hold hearings in the vicinity of each site to inform the residents of the area that the site is under consideration for use as a potential repository and to receive their comments.

Before sinking any exploratory shafts in the course of site characterization activities, the Secretary must submit specified information to the Nuclear Regulatory Commission and the State Review Boards. In conducting the site characterization activities, the Secretary is prohibited from placing radioactive materials at the site unless the Nuclear Regulatory Commission concurs that such use is necessary to provide data for the submission of an application for a construction authorization. if the placement of such waste is determined to be necessary, the Secretary is to place the smallest quantity necessary, but in no event more than the curie equivalent of 10 metric tons of spent fuel, and any such radioactive materials placed at such site shall be fully retrievable.

If, on the basis of site characterization activities and public hearings, the Secretary determines that the site is suitable for use as a full scale licensed repository, the Secretary is directed to submit a recommendation to the President that a repository be constructed at that site. The President has 60 days to consider the Secretary's recommendations. If the President approves the Secretary's recommendations, the Secretary is directed to apply to the Nuclear Regulatory Commission for a construction permit and to supply the State Review Board with a copy of the application. The Secretary is directed to submit an application to the Nuclear Regulatory Commission not later than January 1, 1986, and the Commission is directed to issue a final decision approving or disapproving an application by January 1, 1990, or by the expiration of four years after the date of submission of the application, whichever is later.

If the Commission approves the application, the State Review Board has 30 days to petition Congress to disapprove the construction of a repository at the designated site. The Congress would then consider the State Review Board's petition under expedited procedures similar to those contained in the Energy Policy and Conservation Act, and the State's position could be upheld only if both Houses of Congress acted in favor of the State's petition.

The bill vests a State Review Board, established under State law and meeting the requirements contained in the bill, with the authority to review the activities of the Secretary and the Commission in regard to the selection of a site and the design, construction and licensing of a repository which is to be located within the borders of the State; to be a representative of the State in any Commission proceeding; and to submit on behalf of the State a petition to the Congress to disapprove the construction of a repository within the State. The Secretary of Energy is authorized to make grants to the State Review Board providing up to 75 percent of the operating cost of the Board and subject to such terms and conditions as the Secretary may prescribe.

The bill also provides for an expedited judicial review which requires that any review of an administrative action relating to the project be brought within 180 days of such agency action. Any such

action is to be brought in the United States Court of Appeals for the District of Columbia.

The bill also directs all Federal agencies, other than the Nuclear Regulatory Commission, to issue or grant any required certificate, license, lease, right-of-way, permit, or other authorization needed to construct or operate a repository at the earliest practicable date, to the extent permitted under the applicable provisions of law administered by such agency, and further requires that consideration of such application is to take precedence over other applications or requests not related to the repositories. However, nothing in this bill is to be construed to add to, amend or abrogate any term or condition included in any authorization issued or granted by any affected Federal agency.

The Environmental Protection Agency is directed to promulgate general applicable standards, pursuant to its existing authority, for the protection of the general environment from radioactive materials by November 1, 1981.

The Nuclear Regulatory Commission is directed, pursuant to existing law, to promulgate criteria which will apply under the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, in reviewing applications for construction authorization for the construction of repositories.

The bill also establishes a low-level radioactive waste management program and vests in the States the responsibility for disposing of non-Federal low-level radioactive waste within the State's border and establishes a program to encourage the regional management of such radioactive waste. Under the provisions, the States are authorized to enter into compacts which may be necessary to provide for the establishment and operation of facilities for the disposal of low-level radioactive waste. These compacts are to be reviewed and approved by Congress and are to provide that every five years after the compact takes effect the Congress has the authority to withdraw its consent. After January 1, 1987, any such compact may restrict the use of a regional disposal facility under the compact to the disposal of non-Federal low-level radioactive waste generated by the signers of the compact. The Secretary is directed to submit to the Congress, within 120 days after the date of enactment of this Act, a report containing certain information specified in the Act.

The bill also directs the Secretary to study the uranium mill tailings site of Edgemont, South Dakota.

COMMITTEE HEARINGS

Committee consideration

On July 25, 1980, the Subcommittee on Energy and Power conducted a public hearing on H.R. 6390 and H.R. 7418. A total of thirteen witnesses appeared before the Subcommittee. The witnesses included the Honorable Butler Derrick, a Representative from the State of South Carolina, the Chairman of the Nuclear Regulatory Commission, representatives from the Environmental Protection Agency, the Department of Energy, the American Nuclear Energy Council and the Environmental Policy Center.

The NRC described a number of elements which it determined are needed in any comprehensive bill on waste management. These

elements included (1) an extension of the NRC's regulatory authority, (2) a multiple-site characterization process prior to selecting the proposed site of the repository for permanent disposal of high level waste, including spent fuel, (3) a multistep repository licensing procedure for full State participation in the repository licensing procedure, (4) long-term storage of spent fuel and high level waste, and (5) certain additional provisions concerning the disposal of non-defense related low level waste.

The Commission contended that any comprehensive waste management legislation should clearly specify what extension, if, any, of the NRC's regulatory authority Congress intended. In addition, any pilot program which focused on a few specific DOE waste management activities, but not including defense-related waste, should be established to test the feasibility of extending NRC regulatory authority on a consultive basis to DOE waste management activities not prersently covered by the NRC's licensing authority. In regard to multiple-site characterization, the Commission suggested that an appropriate sequence would be an initial site screening, detailed site characterization and, finally, construction, emplacement of waste, and closure of the full-scale repository. In the site characterization stage, the Department of Energy would select four or five promising candidate sites.

Under the NRC's suggestion, the Agency's formal licensing procedure would not begin until the Department of Energy applied for authorization to construct a repository of a specific design at a designated site. However, there would be informal NRC involvement in the site characterization effort. The formal NRC licensing procedure that was outlined in the Commission's proposed rulemaking, and which is recommended by the Commission, would consist of three major steps; construction authorization, authorization to begin waste emplacement, and authorization for final repository closure once waste emplacement is completed. The Commission did oppose incorporating specific new standards, criteria, or design specifications since that would restrict its ability to revise the criteria and standards as new information was developed and more experience was gained.

A key part of the entire waste management program must involve state participation. The Commission testified that it believed that a state should be allowed to object to the siting of a waste facility within its borders but only after the NRC hearing process has been completed. It pointed out that if a State could object to a site before the NRC licensing process was completed, it would create a presumption that Congress had approved that particular site. The NRC specifically testified that they opposed this provision in the introduced version of H.R. 6390. The Commission went on to testify that it believed that including a long-term retrievable storage component in an overall waste management strategy would be acceptable.

The Department of Energy witness testified that the Department had plans for at least four or five sites in at least three different geologic media to be characterized by 1985. This assumed that sufficient characterization could be achieved without the necessity of sinking exploratory shafts at every potential site and that a waste management program would be carried out in full compliance with the National Environmental Policy Act. The Department did indi-

cate that it was its view that proceeding with unlicensed facilities at potential repository locations as proposed by H.R. 7418 (as reported by the Committee on Science and Technology) could compromise those sites for later consideration as a full-scale repository. It pointed out that this is the case since the NRC is expected to require early involvement in all activities for sites subject to future licensing. The absence of this involvement could lessen the likelihood of NRC approval of unlicensed demonstration repositories for full-scale development. The Department also expressed the concern that a major problem with H.R. 7418 was the absence of a long-term program and the reduced emphasis on a broad scientific basis needed for subsequent licensing of full-scale facilities. It took the position that "it is essential that we develop an understanding that important technical issues are being properly addressed and that selection of sites for geologic repositories is based on their suitability and not on some arbitrary requirement to meet the needs of a near term technology demonstration." The Administration advised this Committee that it is opposed to the major redirection of the President's program that H.R. 7418 would entail. It was the Administration's view that the net effect of H.R. 7418 would be to delay, not accelerate, the date of the first full-scale repository.

The witness speaking on behalf of the American Nuclear Energy Council, the Edison Electric Institute, and the Utility Nuclear Waste Management Group, advised the Committee that during 1979, 72 nuclear power plants supplied the energy equivalent of the total Alaskan region oil production during that same year. By 1985 the share of electricity produced by nuclear energy should increase to approximately 20 percent of national generation as plants undergoing construction are completed or licensed to operate. The electric output of these plants would yield about 3 million barrels of oil equivalent per day. The witness indicated that one element essential to a waste policy program was the establishment of a definitive program plan with appropriate milestones, reflecting the specific decision responsibilities of the appropriate government agencies. He testified that it was his association's firm belief that "a Congressionally mandated directive to the Administration to take timely and constructive actions on the waste program is one essential element of restoring public confidence in the government's commitment to resolve the waste problem." He indicated that the limited sharing of information within the Federal agencies in the past had substantially contributed to the delays in establishing an effective program to date.

The witness testified further that his organization believed an opportunity for constructive State participation is an essential element of the Federal Waste Management Program. He added, however, that an outright State veto was not in the national interest even if such a veto were coupled with a Federal override by the President or Congress. Drawing from the 1978 amendments to the Outer Continental Shelf Lands Act, his organization developed a set of principles: (1) Potential host States should be able to participate early in the siting process but should not be able to prevent a Federal agency from performing exploratory work to identify favorable national repository sites; (2) Federal assistance should be provided to the potential host States to allow them to participate in the siting process in an informed and constructive manner; and (3)

States should be provided with the opportunity to submit recommendations to the responsible Federal agency relating to environmental protection, health and safety issues, or fiscal or social impacts. The Federal agency, in turn, should advise the State in writing of the reasons for its determination to accept or reject a State's recommendations or to implement any alternative means identified.

With respect to the problem of low-level waste, it was pointed out that about 57 percent of low-level waste results from activities other than the generation of electricity from nuclear energy. For this reason, he advised going slow on a program of using existing nuclear generation plants for low-level waste processing. He also testified that he did not believe Federal legislation is needed to enable waste processing activities at power plant sites. If any impediments exist, they would arise only from potential regulatory restrictions.

BACKGROUND AND NEED

Any activity, be it military, commercial, medical or research, which produces or uses nuclear materials generates wastes which are radioactive. Although they may be in the form of a liquid, solid, or gas, all radioactive wastes have one outstanding feature in common: as long as they remain radioactive, they are potentially biologically hazardous. High-level radioactive wastes are the most potentially hazardous. Some high-level radioactive wastes remain toxic for centuries, and a few remain toxic for hundreds of thousands of years. All high-level radioactive wastes are man-made. There is one more outstanding feature that all high-level radioactive waste have in common: to date, there is no proven method for disposing of high-level radioactive waste in a safe and environmentally sound manner.

It was less than 38 years ago that American scientists induced the world's first continuing, self-sustaining nuclear chain reaction, and, in so doing, produced the world's first high-level radioactive waste. For almost four decades now, government policies have allowed an ever increasing quantity of radioactive materials to be generated without having first demonstrated that such materials can be disposed of in a safe and environmentally sound manner. As a result, there are today stored in various parts of the country, 9,300,000 cubic feet of high-level radioactive waste and 1,225 kilograms of transuranic wastes. In addition to the high-level radioactive waste, there are also over 2,500 metric tons of spent fuel, which contain many highly radioactive materials, stored at reactor sites throughout the nation. Over 65 million cubic feet of low-level waste has been produced. Additionally, there are over 140 million tons of uranium mill tailings stored in unstable piles at the site of uranium mills, many of which have been abandoned.

Uranium mill tailings are a form of low-level waste. They contain radioactive materials, and, in an unstable condition, radioactive gases resulting from the decay of radon-222 which can escape into the environment, or the radium can leach into the surface or ground water.

Although historically, most radioactive wastes were produced as part of the military program, today a majority of highly radioactive

materials are being created in the course of generating electricity from nuclear reactors. Nuclear reactors use uranium fuel, and, when the uranium atom fissions, the fission process produces two new atoms, each of which has a lower atomic weight than uranium, although the combined atomic weight of atoms will be slightly less than uranium because part of the mass of the uranium atom was converted to energy. Substances produced in the course of a fission reaction which have a lower atomic weight than uranium are known as "fission products", a number of which are radioactive. The fission process also produces substances known as "transuranics", because they have an atomic number greater than uranium. Transuranics are formed when neutrons, produced in the course of the fission process, are absorbed by atoms and fuel. Transuranics are radioactive.

Radioactive materials are unstable, and, over time, decay. From a waste management standpoint, the important distinction between "fission products" and "transuranics" is the length of time during which each of these categories of materials remain radioactive. This is measured in terms of "half-lives" which is the period of time required for radioactive nuclide to decay to half its original value. Although there is some debate as to the number of half-lives required for radioactive materials to decay to a harmless level, with some arguing that it requires twenty half-lives, the historical rule is that it requires at least ten half-lives for most radioactive products to decay to a safe level.

For example, two of the most biologically hazardous radioactive materials are strontium-90 and cesium-137. Strontium-90 has a half-life of 28 years, and cesium-137 has a half-life of 30 years, meaning that, under the historic rule of ten half-lives, it would take approximately 300 years for these two products to become relatively harmless and, under the 20 half-lives theory, 600 years for them to achieve a harmless level. Thus, the quantities of these two fission products in reactors which are in operation today will have to be carefully isolated at least until the year 2280, and perhaps until the year 2580. In the course of recorded history, such period of times are comprehensible. There are structures in use today which are 300 years old such as St. Peter's Basillica in Rome, which was completed over 350 years ago.

Strontium-90 and cesium-137 are fission products. some of the transuranics, however, have much longer half-lives. for example, plutonium-239, which is more toxic than strontium-90 or cesium-137, has a half-life of 24,500 years, meaning that it will have to be isolated for at least 245,000 years. A more complex product is americium-243, which has a half-life of 7,300 years, but which decays into plutonium-239. Thus, the toxicity of americium-243 decreases for about 20,000 years, after which it becomes more toxic than it was originally. The period of time during which some of the transuranics and antinide elements must be isolated from the biosphere is incomprehensible in terms of recorded history.

It must be recognized that the actual quantity of radioactive products produced by nuclear reactors is relatively small. A thousand megawatt reactor in operation would, in the course of a year, produce only about 2 cubic meters of radioactive waste. However, the overriding concern is not the quantity of radioactive materials produced, but rather their toxicity, and the period of time during

which they remain radioactive. Thus, as stated earlier, as long as these products remain highly radioactive, they remain potentially hazardous. Exposure to and/or ingestion of even minute quantities of radioactive materials can cause biological damage. In the extreme, exposure to intense radiation can lead directly to death or cause a variety of diseases which could be fatal. Radioactive materials can also be mutagenic, resulting in the transmission of biological damage to future generations. It has been estimated that over 2 million pounds of plutonium will be produced in commercial reactors in the United States by the year 2000. It is theoretically possible that a single pound of plutonium finely dispersed could cause an incalculable number of cancers.

When nuclear power was first being commercially promoted, it was assumed that spent fuel rods withdrawn from the reactor would be reprocessed. Reprocessing is a method by which short-lived fission products are separated from the transuranics. The transuranics would then be used as a fuel, whereby they would be consumed and transformed as part of the fission process. Although this would produce more transuranics, the process of separation and consumption could continue. As a result, only the shorter lived fission products would have to be disposed of, making the problem of radioactive waste disposal much more manageable by reducing the time in which radioactive materials would have to be isolated from the biosphere.

Because spent fuel contains valuable minerals which could be extracted, it is argued that it is not a nuclear waste, and the Committee takes no position on this issue. Given the quantities of spent fuel that will be produced before any reprocessing plant could be built, it is unlikely that all spent fuel will be reprocessed, and that some utilities may prefer to dispose of it rather than bear the cost of continued maintenance and monitoring. Additionally, some spent fuel may not be able to be reprocessed, in that its containers may have been ruptured, as was the case of one batch of spent fuel rods at the Western New York Service Center. Moreover, some spent fuel rods may be severely damaged, such as those in the Three Mile Island nuclear reactor. Thus, sound management requires that repositories be designed to dispose of spent fuel and reprocessed waste.

Thus, in order to isolate radioactive materials being produced today, the most immediately practical method under consideration is deep geologic disposal. This method involves sinking a shaft deep into a stable geologic formation, and then placing the high-level radioactive materials in caverns which have been excavated along tunnels which have been mined laterally from the shaft. As each cavern becomes filled, it would be sealed off from the tunnel. although the waste of spent fuel would be encased in containers designed to prevent the release of any radioactivity, the ability of any man-made containers to endure for a quarter of a million years is obviated by the fact that the ultimate barrier which prohibits the release of any radioactivity into the biosphere is the geologic media itself. The effectiveness of this method is dependent upon finding a geologic media whose integrity is intact, meaning that it does not have openings which would allow radioactivity to escape into the atmosphere or into the ground water. The structural integrity of the geologic media would also have to be stable enough to maintain

its integrity during the period of time in which these materials remain radioactive. In geologic time, 250,000 years is not unprecedented. While it is believed that there are locations within the United States which meet these requirements, it is further believed that the number of such locations is limited. Every effort must be taken to insure that any activities leading to the establishment of a repository does not disturb the site to the point where it is not useful for use as a repository.

Past Federal efforts to establish demonstration repositories for disposing of high-level radioactive waste have not been successful. The first major effort was undertaken ten years ago when the Atomic Energy Commission selected a salt deposit near Lyons, Kansas as the location of the first repository. As a geologic media, salt appeared to have many advantages, in that it is soluble, meaning that its presence indicates an absence of water, thereby minimizing the potential for water to pass through the repository and carry the radioactive contaminants into a supply system. Additionally, salt bends rather than breaks under heat, and, in the event of an earthquake, any cracks would probably heal themselves. Moreover, salt is an effective radiation shield. Unfortunately, the proposed repository site was only one-half a mile from an active salt mine, meaning that the structure had been penetrated. The formation also contained leaks, as was learned when the mine operators attempted hydraulic mining when water was pumped into the mine. During one experiment, 175,000 gallons of water disappeared in the mine. Confronted with this evidence and faced with increasing political and public opposition, the Atomic Energy Commission abandoned this effort.

Because it had concentrated its efforts in salt, and therefore knew more about salt than any other media, the Atomic Energy Commission then began to consider other salt formations and tentatively selected a site in New Mexico. Although the Federal government originally announced that the site would be used for demonstrating disposal methods for transuranic contaminated waste, the Department of Energy subsequently announced that it also intended to place spent fuel into this demonstration facility. Confusion over the purposes of the site and concern about the ability of the proposed repository to effectively contain the quantities of radioactive activity associated with spent fuel, together with the discovery of brine and gases near the survey site, led to increasing public opposition to the continuation of the project. As a result, the Administration recently announced that it was delaying the establishment of a repository at this New Mexico site until it had time to consider alternative geologic media.

The failure of the Federal government to have successfully demonstrated that it can dispose of high-level radioactive materials after nearly four decades of allowing such materials to be generated and the recently announced proposal to delay the establishment of a repository for as much as two more decades, has resulted in the erosion of public confidence in the ability of the government to prove that it can dispose of these materials. Additionally, continuing delays in the actual establishment of a repository are causing the erection of an increasing number of institutional barriers to the expansion of nuclear energy.

For example, in a number of states, statutory or regulatory restrictions have in effect prohibited the construction of new nuclear power plants until it has been established that the waste materials generated by the operation of such plants can be disposed of safely. In other states, restrictions have been imposed on the length of time spent fuel can be stored within a state. Even in the absence of state restrictions, the unresolved issue of the disposal and the question of the long-term storage of spent fuel at the reactor site is being raised in the context of new nuclear power plant licensing proceedings.

Institutional barriers are not only being erected against the generation of additional quantities of radioactive materials, but also against the establishment of a repository for disposing of such materials. A number of states have enacted laws either prohibiting the location of a repository within the state or requiring that the Governor, the State Legislature, or both, approve the location of a repository within the state. Some states and local communities have prohibited the transportation of high-level radioactive materials of spent fuel through the state or local communities or imposed severe restrictions on such transportation.

The establishment of these institutional barriers is a result of an increasing public perception of the hazards of radioactive materials as well as the growing concern that the failure of the Federal government to have yet successfully demonstrated methods of disposing of nuclear materials and of the criticism of proposals of disposing of such materials is evidence that radioactive materials cannot be disposed of safely.

Continued delays in establishing that radioactive materials can be disposed of safely and in an environmentally sound manner can no longer be tolerated. This is important not simply because of the effect the failure to demonstrate that radioactive materials can be disposed of safely will have on the licensing of nuclear power plants, but also because it is no longer acceptable to allow increasing quantities of nuclear waste to be stored on an interim basis. The existence of these wastes in their present form poses a growing hazard which cannot be allowed to continue indefinitely. It is essential that an orderly and timely Federal program be established to properly address this aspect of the nuclear issue. Whatever the future of nuclear energy, radioactive wastes exist, and their existence in this state poses a serious hazard until it can be successfully isolated from the biosphere.

SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1 states that this Act may be cited as the "Nuclear Waste Policy Act".

Section 2. Definitions

Section 2 defines the terms used in this Act. Under section 2(1), the term "Commission" means the Nuclear Regulatory Commission. Subsection 2(2) defines the term "Secretary" to mean the Secretary of Energy. Subsection 2(3) defines the term 'disposal" to mean the long-term isolation of radioactive waste. Under subsection 2(4), the term "high-level radioactive waste" means spent fuel and the highly radioactive wastes resulting from the reprocessing

of spent nuclear fuel. Such terms includes both liquid waste which is produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high-level radioactive waste for purposes of protecting the public health and safety.

Subsection 2(5) defines the term "transuranic waste" to mean material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, which have a half life greater than 5 years, and which are in concentrations greater than 10 nanocuries per gram or in such other concentrations as the Commission may prescribe to protect the public health and safety.

Under subsection 2(6), the term "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

Subsection 2(7) defines the term "spent nuclear fuel" to mean fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

Under subsection 2(8), the term "site characterization" means activities undertaken to determine the geologic characteristics of a site and to otherwise determine if a site meets the requirements applicable to sites for repositories. Such term includes borings, surface excavations, excavations of exploratory shafts, and in situ testing needed to determine the suitability of a site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

Subsection 2(9) defines the term "repository" to mean any facility for the permanent disposal of transuranic waste, high-level radioactive waste, or both such wastes, whether or not such facility is designed to permit the subsequent recovery of the waste placed in the repository.

Under subsection 2(10), the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in Section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

TITLE 1—DISPOSAL OF TRANSURANIC AND HIGH-LEVEL RADIOACTIVE WASTE

Findings

Under section 101(a), the Congress finds that (1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal; (2) the accumulation of spent fuel from nuclear power reactors, radioactive waste from commercial nuclear reprocessing, activities related to medical research, diagnosis, and treatment, and nuclear research and development activities, and radioactive waste from other sources, has created a national problem; (3) Federal efforts during the past 30 years to devise a permanent solution to the problems of radioactive waste disposal have not been adequate; (4) the Federal government has

the responsibility to provide for the permanent disposal of transuranic waste and high-level radioactive waste in order to protect the public health and safety and the common defense and security; (5) the primary objective of repositories for such waste is to isolate them from the biosphere; (6) state and public participation in the planning and development of permanent repositories for the disposal of radioactive waste is essential in order to promote confidence among the public with regard to the safety of disposal of radioactive waste; (7) the implementation of a radioactive waste repository program in accordance with this title would provide reasonable assurance that methods of safe disposal of transuranic waste and high-level radioactive waste can be available when such methods are needed; and (8) radioactive waste has become a major issue of public concern, and stringent precautions must be taken to ensure that radioactive waste does not adversely affect the public health and safety of this or future generations.

Purpose

The purpose of this title is to (1) establish a schedule for the siting, construction, and operation of licensed permanent repositories for transuanic waste and high-level radioactive waste which will provide the Congress with a reasonable assurance that the public will be adequately protected from the hazards posed by such wastes; (2) establish the Federal responsibility for the disposal of such wastes from nuclear activities, and (3) establish a definite Federal policy for the disposal of such wastes.

Identification of sites for repositories

Subsection 102(a) provides that not later than January 1, 1982, the Secretary shall identify and recommend to the President at least four sites which the Secretary determines are suitable for the development as repositories. A recommendation of a site shall include a detailed statement of the basis for the recommendation of the site. If the Secretary recommends a site to the President, the Secretary shall notify the State Review Board of the state in which the site is located of the Secretary's recommendation and the basis for such recommendation. The designation of any site pursuant to this subsection would be for the purpose of undertaking detailed site characterization activities at the site and would be a preliminary action prior to any decision regarding the actual use of the site as the location of a repository. The statement which is to be submitted to the President is to contain the reasons for the preliminary designation and include not only scientific and technical considerations, but also such factors as assess to transportation facilities and any social or economic or environmental factors relevant to the operation of a repository at that site, as well as a report on the public hearings held pursuant to subsection 102(d). The submission of the report to the President constitutes a recommendation, and the President has the authority to reject further consideration of any site included in the Secretary's submission.

Subsection 102(b) provides the guidelines for identification of sites for repositories. Not later than June 30, 1981, the Secretary shall, in consultation with the Council on Environmental Quality, the Environmental Protection Agency, the Nuclear Regulatory Commission, and the United States Geological Survey, issue guide-

lines for the recommendation of sites for repositories. Such guidelines shall include criteria for the elimination from consideraton of sites which because of valuable natural resources, proximity to populations, hydrogeophysics, seismic activity, nuclear defense activities, or such other factors as the Secretary considers appropriate would be unsatisfactory as sites for repositories. The guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering sites to be recommended under subsection (a). The development of guidelines under this subsection shall be considered a preliminary decisionmaking activity and shall not be subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969. The establishment of guidelines are for the purpose of formulating a site selection criteria which reflects the interest of the relevant agencies so that the regulatory concerns and their particular expertise can be incorporated into the site selection process. The designation of certain agencies is not to be construed as limiting the Secretary's authority to obtain the advice of agencies not specifically mentioned, and the Committee expects that the Secretary will actively seek the assistance of all relevant agencies in formulating these guidelines. The establishment of these guidelines is merely to assist the Secretary in the site selection process, and the guidelines themselves are not to encompass the exclusive basis for any decision. Consequently, the guidelines are to be advisory and adherence to or deviations from these guidelines does not create any legal cause of action or form a basis for judicial review of the Secretary's decision.

Under subsection 102(c), before recommending any site for a repository to the President, the Secretary shall hold public hearings in the vicinity of the site to inform the residents of the area in which the site is located of the proposed recommendation and to receive their comments. The Committee expects that the Secretary will afford interested members of the public every opportunity to participate in a meaningful manner at each stage of the site selection process and that such public hearings will provide a useful forum for addressing public concerns.

Subsection 102(d) provides for the Presidential review of recommended sites as follows: (1) the President shall review each site recommended by the Secretary under subsection (a), within 60 days after the submission of a recommendation for a site, the President shall either approve or disapprove the site and transmit his decision to the Secretary and the State Review Board of the State in which the site in which the site is located; and (2) the President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a site upon determining that the information provided with the recommendation is not sufficient to permit a decision within the 60 days referred to in paragraph (1). The purpose of the Presidential review is to provide an independent evaluation of the Secretary's activities, and the Committee expects that this will establish a useful mechanism by which all Executive departments will be afforded the opportunity to fully review and comment upon the proposed site. It will also afford the States including those which border the State in which a repository

site is designated and interested parties an opportunity to comment upon the Secretary's activities. If the President fails to disapprove any site contained in the Secretary's submission within the designated time period, such failure shall constitute approval of the designation.

Subsection 102(e) defines the terms for the continuation of site screening process. After the identification of sites under subsection (a), the Secretary shall continue to screen other sites to determine their suitability for repositories.

Site characterization

Under subsection 103(a), the Secretary shall carry out in accordance with this section appropriate site characterization activities at each site approved under section 102.

Subsection 103(b)(1) provides that before proceeding to sink shafts at any site, the Secretary shall submit for such site to the Commission and to the State Review Board of the State in which the site is located for their review and comment (A) an environmental assessment of the nonradiological impacts of the site characterization activities planned for such site and discussion of alternative activities which may be undertaken to avoid such impacts; and (B) a plan for site characterization activities to be conducted at such site which plan shall include (i) a description of the site; (ii) a description of the site characterization activities, including the extent of planned excavations, plans for any on-site testing of radioactive or nonradioactive material, investigation activities which may affect the ability of the site to isolate radioactive wastes, and provisions to control any adverse, safety-related impacts from site characterization activities; (iii) plans for decommissioning of the site if it is determined unsuitable for application for licensing as a repository; (iv) criteria to be used to determine if the site is acceptable as a site for a repository; and (v) any other information required by the Commission. The excavations for shafts referred to in section 103(b)(1) are those which are conducted as a part of the site characterization activities directed to be performed under subsection 103(a). By requiring the Secretary to submit the specified information at this time, the Commission and the State Review Boards are afforded the opportunity to fully comment on the Secretary's proposed activities prior to any action which might disturb the geologic integrity of the site and thereby compromise its subsequent use as the location of a full scale repository.

Subsection 103(b)(2) provides that during the conduct of site characterization activities at a site, the Secretary shall report to the Commission and to the State Review Board of the State in which the site is located on the nature and extent of such activities and the information developed from such activities.

Under subsection 103(c), the Secretary shall conduct at sites at which site characterization activities are being conducted such tests as may be necessary to provide the necessary data for an application for a construction authorization for a repository at the site and for compliance with the National Environmental Policy Act of 1969. The Secretary shall report to the Commission on the tests conducted at a site pursuant to the Commission on the tests conducted at a site pursuant to this subsection and on the information developed from such tests.

The following restrictions are to apply during site characterization activities or tests pursuant to subsection 103(c): (1) the Secretary may not use radioactive materials at a site unless the Commission and the Secretary concur that such use is necessary to provide data for the submission of an application for a construction authorization for a repository at the site; (2) if radioactive materials are placed in a site, the Secretary shall place the smallest quantity necessary to determine the suitability of the site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent fuel; and (3) any radioactive material used or placed on a site shall be fully retrievable.

The intent of subsection 103(d) is to reinforce the concept that the site characterization activities are preliminary to the decision to select a site for use as a full scale repository, and insure that none of the Secretary's preliminary activities prejudice the subsequent decisionmaking process. The Committee is concerned that the use of radioactive materials at this early stage of the site selection process may result in the contamination of the site and that such circumstance may serve as a basis for the subsequent selection of the site as the location of a repository. The Committee, therefore, intends that the actual use of radioactive materials be a last resort to obtain information necessary for submission of an application for a construction permit, and that the Nuclear Regulatory Commission must not only concur that the use of the material is necessary for conducting the proposed test, but also concur in the manner in which the tests are to be conducted. Subsection 103(b)(1)(B)(iii) requires that the Secretary submit, in advance, a plan for decommissioning any site prior to the sinking a shaft as a part of the site characterization activities, and the Committee intends that any decommissioning plans include provisions for decontaminating a site at which radioactive materials are used. the Secretary may not use radioactive materials in conducting such tests if the Commission does not concur. Any radioactive material used in such test must be fully retrievable, and the Committee expects that the Secretary will not only be able to retrive this material, but also that a place certain will exist to which the material could be removed at the conclusion of the test or earlier if necessary. The Committee also expects that only the smallest quantity of materials will be used in such tests and that radioactive materials will be used for such time as necessary to conduct the required test and will be removed promptly from the site at the conclusion of the test.

Construction authorizations

Subsection 104(a), provides that if after completion of site characterization activities at a site (1) the Secretary determines that the site meets the requirements applicable to repositories, the Secretary shall proceed in accordance with this section to secure approval of the site and a construction authorization for construction of a repository at the site, or (2) the Secretary determines that the site does not meet such requirements, the Secretary shall notify the State Review Board of the state in which the site is located of such determination.

After completion of the characterization activities at a site, and the Secretary determines that the site meets the requirements ap-

plicable to repositories, subsection 104(b)(1) directs the Secretary to hold public hearings in the vicinity of the site to inform the residents of the area in which the site is located of the determination of the Secretary and to receive their comments. If, upon completion of the hearings, the Secretary affirms the determination, the Secretary shall submit to the President a recommedation that the President approve the site for the development of a repository.

Subsection 104(b)(2)(A) directs the President to review each site recommended by the Secretary under paragraph (1)(B), and, within 60 days after the submission of a recommendation for a site, the President shall either approve or disapprove the site and transmit his decision to the Secretary and the State Review Board of the State in which the site is located.

Under subsection 104(b)(2)(B), the President may delay for not more than 6 months hs decision to approve or disapprove a site upon determination that the information provided with the recommendation is not sufficient to permit a decision within the 60 days referred to in subparagraph (A).

If the President approves a site for a repository under subsection (b), the Secretary is directed under subsection 104(c)(1) to apply to the Commission for a construction authorization for construction of a respository at the site and to provide the State Review Board of the state in which the site is located a copy of the application.

The Secretary is directed under subsection 104(c)(2) not later than January 1, 1986, to submit to the Commission an application for a construction authorization for the construction of a repository.

The purpose of section 104 is to establish a procedure for selecting the site of a repository. The Committee expects that in conducting the hearings held pursuant to subsection 104(b)(1), the Secretary will afford interested members of the public every opportunity to provide meaningful input in the decisionmaking process, and their views and concerns will be included in the Secretary's recommendation to the President. Subsection 104(b)(2)(A) requires a decision by the President, and under section 104(c), the Secretary is prohibited from submitting the application for a construction authorization unless the President approves the Secretary's recommendations within the designate time period.

Subsection 104(d)(1) directs the Commission to consider an application for a construction authorization for the construction of a repository in accordance with the laws application to such applications, except that the Commission shall issue a final decision approving or disapproving the first such application not later than (A) January 1, 1990, or (B) the expiration of four years after the date of the submission of the application, whichever occurs later.

If the Commission approves an application for a construction authorization for the construction of a repository, subsection 104(d)(2) directs it to (A) notify the Congress of the approval of such application and include in the notice a detailed statement, and (B) notify the State Review Board of the state in which the repository would be located of the approval and include in the notice a detailed statement of the reasons for approval of the application.

If a State Review Board of a State in which a repository is to be constructed petitions the Congress for the disapproval of the construction of a respository for which a construction authorization

has been granted by the Commission, under subsection 104(d)(3) the Commission is directed to provide the Congress with such information respecting the construction and proposed operation of the repository as the Congress may require.

Congressional disapproval

Subsection 105(a) provides that if the Commission grants a construction authorization for the construction of a repository and a State Review Board of a state petitions the Congress, in accordance with section 106(b), for the disapproval of the construction of the repository at a site within the state, the repository may not be constructed at the site if, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of the petition submitted by the State Review Board, the Congress passes a concurrent resolution stating in substance that the Congress disapproves the construction. A petition shall be considered to have been received by the Congress on the date of its receipt by the Speaker of the House of Representatives and the President pro tempore of the Senate.

Subsection 105(a)(2) defines the purposes of paragraph (1) to be (A) continuity of session is broken only by an adjournment of the Congress sine die; and (B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-calendar-day period.

For purposes of this section, subsection 105(a)(3) defines the term "concurrent resolution" to mean a concurrent resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the Congress does not approve the construction of the repository for which a construction authorization was granted by the Nuclear Regulatory Commission on , 19 ." with the blank spaces be appropriately filled.

Subsection 105(a)(4) provides that this section is enacted by the Congress (A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such, it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of concurrent resolutions defined in paragraph (3) and it supersedes other rules only to the extent that it is inconsistent with such rules; and (B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

Subsection 105(b) discussed the referral and discharge of a concurrent resolution. Under subsection 105(b)(1), a concurrent resolution once introduced with respect to the construction of a repository shall immediately be referred to the appropriate committee or committees of the House of Representatives and Senate (and all resolutions with respect to such construction shall be referred to the same committee or committees).

Subsection 105(b)(2)(A) directs this committee to report the concurrent resolution before the end of 20 calendar days after it was received by the House involved, or it shall be in order to move to discharge the committee from further consideration of the concurrent resolution and to discharge the committee from further con-

sideration of any other concurrent resolution with respect to such construction which has been referred to the committee, or to discharge such committee from both.

Under subsection 105(b)(2)(B), a motion to discharge a committee from consideration of a concurrent resolution respecting the construction of a repository may be made only by an individual favoring the concurrent resolution, shall be highly privileged and debate shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the concurrent resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

Under subsection 105(c)(1), when all committees to which the concurrent resolution was referred have reported a concurrent resolution, it shall be at any time thereafter in order to move to proceed to the consideration of the concurrent resolution. The motion shall be highly privileged, and it shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

Subsection 105(c)(2) defines the terms for the debate on a concurrent resolution as being limited to not more than 5 hours, divided equally between those favoring and those opposing the concurrent resolution. A motion to limit debate shall not be debatable. An amendment to, or motion to recommit, the concurrent resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such concurrent resolution was agreed to or disagree to.

Subsection 105(d) defines the motions and appeals of a concurrent resolution as follows: (1) motions to postpone made with respect to the discharge from committee or the consideration of a concurrent resolution and motions to proceed to the consideration of other business, shall be decided without debate, and (2) appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a concurrent resolution shall be decided without debate.

Under subsection 105(d)(3), if one House of Congress receives from the other House a concurrent resolution respecting the construction of a repository, then (A) the concurrent resolution of the other House with respect to such construction shall not be referred to a committee; (B) with respect to the concurrent resolution of the first House with respect to such construction (i) the procedure to that or other concurrent resolutions of such House with respect to the application shall be the same as if no concurrent resolution from the other House with respect to such request had been received; but (ii) on any vote on final passage of a concurrent resolution of the first House with respect to such construction a concurrent resolution from the other House with respect to such construction where the text is identical shall be automatically substituted for the concurrent resolution of the first House.

The purpose of section 105 is to establish the expedited procedures to be utilized by Congress in considering the State Review Board's petition for Congressional disapproval of proceeding with the construction of a repository. The procedures established in this

section are similar to those contained in the Energy Policy and Conservation Act. Under the provisions of section 105, both Houses of Congress would have to act in order to sustain the State Review Board's petition, meaning that if one House fails to act, or if one House rejects the State Review Board's petition, the repository would be constructed at the site for which the Nuclear Regulatory Commission has issued its construction permit.

The Committee believes that any Congressional review of the Secretary's decision prior to the issuance of a construction authorization would be inappropriate in that such action may prejudice the Commission's consideration of the Secretary's application. Consideration of the Secretary's decision prior to the submission of the application for a construction authorization would create a legal presumption that the Congress has determined that the site is suitable for the location of a repository and that such a determination is binding on the Nuclear Regulatory Commission. Moreover, such a premature determination may restrict the Commission's actions by requiring changes in the design and method of construction of the proposed repository. Additionally, Congressional approval of a proposed site prior to the Commission's consideration of an application for a construction permit may compromise the National Environmental Policy Act's review process by foreclosing consideration of alternative sites.

Subsection 106(a) defines the term State Review Board as (1) an entity of the state created under State law with the authority described in paragraph (2) and the composition prescribed by paragraph (3); (2) a State Review Board shall be authorized under State law to (A) review activities under this title and activities of the Commission with respect to any site in the State for a repository to determine the potential economic, environmental, social, and public health and safety impacts of the repository on the state and its residents, (B) be a representative of the State in any proceeding before the Commission respecting a site for a repository in the state, and (C) submit, in accordance with subsection (b), to the Congress petitions requesting the Congress to disapprove, in accordance with section 105, construction of repositories in the State; and (3) the members of a State Review Board shall represent the general public in the State, and if any action has been taken under this title with respect to a site in the state for a repository, the Indian tribes and local governments which would be affected by the repository.

If an application for a construction authorization for the construction of a repository in a State is approved by the Commission, subsection 106(b) directs the State Review Board of the state to submit to the Congress a petition for disapproval, in accordance with section 105, of construction of a repository under the permit. A petition for construction of a repository may be submitted not later than the 30th day after the date the Commission transmits to the Board its decision granting a construction authorization for such construction. The petition shall contain a detailed statement of the reasons of the Board for seeking disapproval of the construction.

Subsection 106(c)(1) directs the Secretary to make grants to the State Review Board of each State, subject to paragraph (2) and to the availability of funds to carry out this paragraph, in which a

site for a repository has been approved under section 102(d). Grants under this paragraph shall be made under such terms and conditions as the Secretary may prescribe, and the amount of funds provided a Board under this paragraph in any fiscal year may not exceed 75 percent of the costs of the operation of the Board in such year as determined by the Secretary. In determining the annual operating expenses of the State Review Board, the Secretary is not to include the salaries and expenses of employees of the State who hold other positions in the State government, and who, because of those positions, are members of the State Review Board. Only the salaries of full times employees who work exlcusively for the State Review Board are to be considered in determining the operating cost of the Board together with the costs of obtaining outside consultants for the time spent in performing work for the Board.

Under subsection 106(c)(2), a State Review Board may not receive any grant after the expiration of one year after (A) the date the Secretary notifies the State Review Board under section 104(a)(1) that a site in the State does not meet the requirements applicable to repositories; (B) the date the President notifies the State Review Board under section 104(b) that the President does not approve a site in the State for a repository; or (C) the date on which the Commission disapproves an application for a construction authorization for a repository at a site in the State, whichever occurs first unless there is another site in the State approved under section 102(d) with respect to which the actions described in subparagraphs (A), (B) and (C) have not been taken. As the operation of a repository terminates the functions of the State Review Board, the Committee expects that the Secretary will terminate funding at this time.

Section 106 defines the authorities of the State Review Boards. Only State Review Boards which comply with the requirements of this section are authorized to submit petitions to congress, and any State which fails to establish a Review Board, or fails to establish a Review Board which meets the requirements of this section, would not have the authority to submit a petition to Congress requesting disapproval of the location of the repository within its borders. It is the committee's intent that the authorities vested in the State Review Board by this section are to be the sole and exclusive authorities available to the States in regard to objecting to the location of a repository within its State. The Committee wishes to stress that it views the implementation of a radioactive waste disposal program as a national program requiring Federal action, and while the Secretary is to comply with all applicable Federal and State laws and regulations, no State is given the authority to veto or not concur in the location of a full scale repository by any means other than those contained in this section. Any informal or extra legal agreement which has been entered into by a State or official of the Federal government which vests the State with the authority to veto or not concur in any manner or the location of a radioactive repository within its borders is superseded by this section. Furthermore, nothing in this section or any other provision of law is to be construed as granting to the Secretary or any other official the authority to enter into any such agreement whereby any State or State official could veto or not concur in the location of the repository within its borders.

Subsection 107(a) provides for the judicial review of agency actions. Any actions taken by the Secretary to recommend a site for approval by the President and in connection with the site characterization of a site, any actions taken by the Commission in granting or denying any construction authorization application submitted under section 104 or for any operating permit for a repository, any actions described in section 108 shall not be subject to judicial review except as authorized by subsection (b).

Subsection 107(b) defines the terms for judicial review of actions as (1) a civil action for judicial review of an administration action described in subsection (a) may be brought not later than the 180th day following the date of such action, except that the court referred to in paragraph (2) may extend the time for bringing such a civil action if the court determines that the facts on which the civil action is based were not reasonably available within the applicable 180-day time limit, and (2) a civil action for judicial review of any such administrative action shall be barred unless a complaint is filed before the expiration of the time limit prescribed by paragraph (1) in the United States Court of Appeals for the District of Columbia Circuit, acting as a special court. No other court of the United States, or any state, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such civil action.

Section 108 directs any Federal agency which is required to issue a certificate, right-of-way, permit, lease, or other authorization relating to the characterization of the site or the construction or initial operation of a repository to issue or grant any such authorization at the earliest practical date, to the extent permitted under applicable provisions or law administered by such Federal agency or officer. All actions of a Federal officer or agency with respect to the consideration of applications or requests relating to the issuance or grant of any such authorization regarding the characterization of a site or the construction or initial operation of a repository shall be expedited, and any such application or request is to take precedence over similar applications or requests not related to radioactive waste repositories.

Subsection 108(a)(2) states that the requirements of section 108(a)(1) are not to apply in the case of any action related to a permit or other authorization issued or granted by or requested from the Nuclear Regulatory Commission.

Subsection 108(b) provides that nothing contained in this section is to be construed to impair the authority of any Federal officer or agency to add to, amend or aggregate any term or condition included in any authorization granted pursuant to subsection (a) if such action is otherwise permitted under applicable law administered by such Federal agency or office.

Subsection 109(a) directs the Administrator of the Environmental Protection Agency, pursuant to authority under other provisions of law, by rule, promulgate generally applicable standards for the protection of the general environment from radioactive materials not later than November 1, 1981.

Subsection 109(b) directs the Nuclear Regulatory Commission, pursuant to the authority under other provisions of law, to, by rule, promulgate criteria which the Commission will apply in reviewing under the Atomic Energy Act of 1954 and the Energy Re-

organization Act of 1974, applications for construction authorizations for the construction of repositories not later than November 1, 1981.

Subsection 110(a) authorizes to be appropriated to the Secretary to carry out the provisions of this title $5,000,000 for the fiscal year ending September 30, 1981.

Subsection 110(b) directs the authority of the Secretary to enter into contracts under this title shall be effective for any fiscal year only to the extent or in such amounts as are provided in advance by appropriation Acts.

Subsection 111(a) states that the provisions of section 107 and 108 shall cease to have effect at such time as the Secretary commences licensed commercial operation of at least one repository.

Subsection 111(b) provides that provisions of this title, other than sections 107 and 108, shall cease to have effect after December 31, 1999.

TITLE II—LOW-LEVEL RADIOACTIVE WASTE

Title II establishes a low-level radioactive waste disposal program. Subsection 201(a)(1) states that it is the policy of the Federal government that each State is to be responsible for the disposal of non-Federal low-level radioactive waste generated within its borders and that non-Federal low-level radioactive waste can most effectively and efficiently be managed on a regional basis.

The purpose of section 201 is to declare the Congressional policy that the responsibility for managing low-level radioactive waste rests with the States, to establish a mechanism in the form of interstate compact, and to enable the States to exercise this responsibility. Subsection 201(a)(A) authorizes States to enter into interstate compacts which, under subsection 201(a)(2)(B), would be subject to subsequent Congressional approval, and which would vest Congress with the authority to withdraw its approval at the end of each five year period. The withdrawal of this approval would require specific action by the Congress. Under this subsection, the States which are a party to the interstate compact would have the authority to exclude after 1987 low-level waste from States which are not a party to the compact. The purpose of this provision is to afford the States an opportunity to enter into regional agreements for the disposal of low-level radioactive waste while providing all States with sufficient opportunity to establish compacts or disposal sites before the exclusionary provisions become operative. The Committee believes that such a provision will provide the States with the inducement needed to act in the time allowed without impeding existing activities.

Subsection 201(a)(2)(A) states that to carry out the policy, the States are authorized to enter into compacts which may be necessary to provide for the establishment and operation of facilities for the disposal of low-level radioactive waste.

Subsection 201(a)(2)(B) provides that any compact entered into pursuant to subsection 201(a)(2)(A) shall not take effect until the Congress has by law consented to the compact. Each compact is to contain a provision which provides that every five years after the compact takes effect the Congress may by law withdraw its consent. After January 1, 1987, any such compact may restrict the use

of the regional disposal facilities under the compact to the disposal of non-Federal low-level radioactive waste generated within the region consisting of the States which are a party to the compact.

Subsection 201(b)(1) provides that the Secretary, in order to assist the States in carrying out the policy established by this bill, shall prepare and submit to the Congress and to each State within 120 days after the date of enactment of this Act a report which (A) defines the disposal capacity needed for present and future low-level waste on a regional basis; (B) defines the status of all commercial low-level nuclear waste disposal sites and includes an evaluation of the license status of each such site, the state of operation of such site, including its operating history, and analysis of the adequacy of disposal technology employed at each site to contain low-level wastes for their hazardous lifetimes, and such recommendations as the Secretary considers appropriate to assure protection of the public health and safety from wastes transported to such sites; (C) evaluates the transportation requirements on a regional basis and in comparison with performance of present transportation practices for the shipment of low-level nuclear waste, including an inventory of types and quantities of low-level wastes, and an evaluation of shipment requirements for each type of waste and an evaluation of the ability of generators, shippers, and carrier to meet such requirements; and (D) evaluates the capability of low-level waste disposal facilities owned and operated by the Department of Energy to provide interim storage for commercially generated low-level waste and estimates the costs associated with such interim storage.

Subsection 201(b)(2) provides that in carrying out this subsection, the Secretary shall consult with the Governors of the States, the Nuclear Regulatory Commission, the Environmental Protection Agency, the United States Geological Survey and the Secretary of Transportation.

Section 202 directs the Secretary to undertake an investigation to determine if it would be appropriate for the Federal government to provide 90 percent of the cost of decommissioning and decontamination activities in conjunction with the uranium mill tailings site owned by the Tennessee Valley Authority and located at Edgemont, South Dakota. The Secretary's investigation is to take into consideration whether tailings resulted all or in part from activities conducted under Federal contract, and include an analysis of the total costs which would be reuired to such site, including the costs of acquiring and managing any disposal site and facilities which may be necessary for the disposal of radioactive materials removed from the site. The Secretary is directed to complete the investigation and submit a report to the Congress within 120 days after the date of enactment. The report is to include any recommendation for Federal funding, provided that any such recommendation is to be consistent with the provisions of the Uranium Mill Tailings Control Act. It is the Committee's intent that nothing in this section be construed as delaying any ongoing remedial actions which may be in progress or about to begin, and the Commission expects that the Edgemont site will be cleaned up as rapidly as possible. It is the Committee's expectation that all Federal agencies will work expeditiously to initiate a remedial action program, especially in regard to any off-site contamination and the section is intended to merely explore the potential for Federal funding to assist

the Tennessee Valley Authorization in cleaning up the on-site tailings.

INFLATIONARY IMPACT STATEMENT

In accordance with Rule XI, Clause 2(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have minimal inflationary effect on prices and costs in the operation of the national economy.

COST ESTIMATES AND COMPARISON—CONGRESSIONAL BUDGET ACT INFORMATION

The Congressional Budget Office (CBO) has provided the Committee the letter printed below pursuant to Section 403 of the Congressional Budget Act of 174 (CBA).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., September 19, 1980.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6390, the Nuclear Waste Policy Act, as ordered reported by the House Committee on Interstate and Foreign Commerce, August 26, 1980.

Title I of the bill establishes a procedure for the selection and construction of a high-level radioactive waste repository. Specifically, the bill directs the Department of Energy (DOE) to prepare site selection criteria by June 30, 1981, to identify by January 1, 1982, four sites suitable for development, and to submit to the Nuclear Regulatory Commission (NRC) by January 1, 1986, an application to construct a disposal facility. The bill requires the NRC to review DOE's proposed site characterization activities and to evaluate DOE's construction application within four years of its submission. Upon petition, the Congress may disapprove with a concurrent resolution the final site selection proposed by the President. Furthermore, the bill authorizes DOE to provide funds to state review boards which may be established in states containing proposed disposal sites. These boards are authorized to review DOE's proposed repository development plans and to monitor site characterization activities.

Title II authorizes the establishment of state compacts to provide regional facilities for the disposal of low-level radioactive waste. DOE must report within four months of the bill's enactment on the status of existing facilities for low-level waste disposal and the projected need for additional capacity and on the appropriate federal role for decontaminating a TVA-owned uranium mill tailings site at Edgemont, South Dakota.

The largest potential costs associated with this bill are for construction of a permanent repository and site characterization stud-

ies. Costs for a permanent repository are highly uncertain pending the selection of a site and storage method. Preliminary estimates for a full-scale facility, however, suggest that design and construction costs will be over $900 million in 1980 dollars. Assuming construction begins in 1990 and takes over six years to complete, total costs would be over $2.5 billion by 1996. No significant expenditures for design and construction are expected prior to 1985.

Site characterization costs by 1985 could also be significant. Depending on how extensive exploratory drilling and testing activities are and the nature of the sites selected, characterizations could cost up to $125 million per site, or a total of up to $500 million.

The bill authorizes the appropriation of $5 million in fiscal year 1981 to the Department of Energy to establish guidelines for recommending and identifying potential sites for development. Outlays are estimated to be $3.7 million in fiscal year 1981 and $1.3 million in fiscal year 1982. The bill does not authorize the appropriation of funds to carry out the required activities of the Nuclear Regulatory Commission and the Environmental Protection Agency. Existing and planned agency efforts are apparently in accordance with the intent of this legislation, and no additional funds are expected to be sought for fiscal year 1981. The cost to provide assistance to the state review boards in states where the President has approved site characterization plans is projected to be approximately $200,000 in 1982 and an average of $1 million a year thereafter.

The uranium mill tailings study required by title II of the bill is expected to cost $300,000 in fiscal year 1981, and the low-level radioactive waste study is estimated to cost approximately $500,000 in fiscal year 1981.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

No oversight findings and recommendations pursuant to Clause 2(1)(3)(A) Rules XI, under the authority of Rule X, Clause 2(B)(1) of the Rules of the House of Representatives are included, in addition to those comments and views contained elsewhere in this report.

Committee on Government Operations

No findings or recommendations on oversight activity pursuant to Clause 2(B)(2), Rule X, and Clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives have been submitted to this Committee by the Committee on Government Operations for inclusions in this report.

SUPPLEMENTAL VIEWS ON H.R. 6390—NUCLEAR WASTE POLICY ACT

We are gratified that the Committee has finally acted to establish a program for dealing with nuclear waste disposal. It is action which is long overdue.

Our nation's nuclear reactors have produced approximately 7,500 metric tons of spent nuclear fuel. This is roughly equivalent to 950 million barrels of oil in energy potential. Due to the current administration's misdirected policy of not permitting this spent fuel to be reprocessed, however, the potential energy in that spent fuel has gone unused. We are confident, however, that commercial reprocessing will soon be permitted again in this country. When it is, the spent fuel will be "recycled" and the usable energy resource removed. What will remain will a small amount of liquid nuclear waste. Using proven technology, this liquid waste will be solidified in a glass-like form. It is then that we will need operating permanent repositories for this waste.

To achieve that goal, this Committee has passed two bills, H.R. 7418 and H.R. 6390, which together will provide the means by which operating repositories will be established. It is our hope that both bills will be integrated into a single bill to provide a comprehensive program for the development of these repositories. Such a bill would have an unlicensed research and development phase and a licensed permanent repository phase. This is as it should be. H.R. 7418, coming from the Committee on Science and Technology, is a research and development bill. It provides for unlicensed testing of different geologic media in which permanent repositories for nuclear waste might be located. It is a program of limited duration, expiring in the year 2000. H.R. 6390 provides for the establishment of permanent, licensed repositories for nuclear waste. This phase, coordinated with the unlicensed research, development, and demonstration phase, can best bring about the establishment of permanent repositories which the Committee desires.

We noted that the definition of high level waste in both H.R. 7418 and H.R. 6390, as reported by this Committee, includes spent fuel. Under such a definition spent fuel, a valuable energy resource, would not be reprocessed but would be forever lost by putting it in repositories for permanent storage. We believe that such blatant waste of a precious energy resource cannot be permitted. But the Committee on Science and Technology and the Committee on Interior and Insular Affairs addressed this same issue and both rejected the notion of permanently storing spent fuel in repositories as established under H.R. 7418 or H.R. 6390. In the spirit of cooperation, and recognizing the need to move quickly to get these bills to the House Floor, we did not attempt in Full Committee to remove spent fuel from the definition of high level waste and, thus, prevent the spent fuel from being put in repositories. In the spirit of energy conservation, something which we know is important to all of our colleagues on both sides of the aisle, we will work to see

that spent fuel is recycled by reprocessing. We trust that a reconciliation of differences between the three committees concerned will result in spent fuel being removed from the definition of high level waste and not permitted to be put into permanent repository storage. If not, then we will urge our colleagues to see that such action is taken when the bill or bills come to the House Floor.

We must assure that these repositories will truly be used for waste materials, and not for energy rich spent fuel.

JAMES T. BROYHILL.
SAMUEL L. DEVINE.
TIM LEE CARTER.
CLARENCE J. BROWN.
JAMES M. COLLINS.
NORMAN F. LENT.
EDWARD R. MADIGAN.
MATTHEW J. RINALDO.
TOM CORCORAN.
TOM LOEFFLER.
WILLIAM E. DANNEMEYER.

SEPARATE VIEWS

We believe any legislation establishing a repository for the storage of nuclear waste should permit full participation by affected states in the site selection process. Experience with the low-level sites in South Carolina, Washington, and Nevada has demonstrated the necessity for obtaining the cooperation of the local population in the site selection process. With good reason, these states are concerned with the handling of nuclear materials.

We are convinced that strong state participation in this process will lead to a more thorough and cooperative effort on the part of the Department of Energy. If the state does not have any effective "club" to hold over DOE, the effort at cooperation is likely to fail.

During consideration of H.R. 6390, Mr. Santini offered an unsuccessful amendment which would have made the Federal-State relationship cooperative rather than adversarial. It would have moved the time for state review of a siting selection to an earlier place on the decision-making schedule, immediately after the President ratifies the decision of DOE on a specific location. Under the Santini amendment, should a state reject the siting decision, the burden would fall on the Federal government to demonstrate why the state's objections should be overridden. A concurrent resolution of disapproval would be necessary to reverse the state's position.

Unfortunately, the legislation as reported does not provide for a meaningful state review. The state does not have opportunity to petition Congress expressing its opposition to a prospective site until after the Nuclear Regulatory Commission grants a construction license. The Commission is given up to 4 years in which to make that decision. Should the state disagree at that point and petition Congress its likelihood of prevailing would be quite remote. Does anyone really believe Congress would reject the decision and allow another 4-year delay? Under the amendment we offered, the state objections would have been presented much earlier, before the tremendous resources in time and effort had been committed by the NRC. Should the state position not be overridden by Congress, there would be adequate time for the selection of another site.

We feel the relationship between the national government and the states is the critical element in any nuclear waste policy adopted by this Congress. Without cooperation, the Federal program is bound to face enormous obstacles. As reported by this Committee, the legislation does not provide the basis for confidence on the part of the states that their concerns will receive serious consideration.

As the legislative process continues, we intend to support stronger provisions to protect the rights of the states in this most critical decision.

EDWARD J. MARKEY.
JAMES D. SANTINI.

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